

JRO:MKD:ljc 37169 \pleading\37169MTDismissCounts

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CAROLINE DACOSTA, as Personal  
Representative and Administratrix for the  
Estate of JOSE L. DACOSTA, JR.

VS.

CPR FISHING, INC.

C. A. NO. 04cv12059 JLT

PEARL BEAUVAIS, as Personal  
Representative and Administratrix for the  
Estate of JOHN BEAUVAIS

VS.

CPR FISHING, INC.

C.A. NO. 04-12057 NG

**DEFENDANT'S MOTION TO DISMISS**  
**COUNTS ONE AND TWO OF PLAINTIFFS' COMPLAINTS**

Now comes the defendant in the above captioned matters and hereby moves to dismiss Counts One and Two of plaintiffs' Complaints. It is undisputed from a reading of plaintiffs' complaints that the decedents' deaths occurred on the high seas, allegedly due to the acts of the defendant. Therefore, the sole source of recovery against the defendant is based on the pecuniary loss to the decedents' heirs at law as provided in the Death on the High Seas Act. Accordingly, Counts One and Two of the plaintiffs' complaints, for common law negligence and the Massachusetts wrongful death statute, should be dismissed. As reason therefor, defendant relies on the attached memorandum.

DEFENDANT,  
By its Attorney,



J. Renn Olenn, Esq. #0623  
OLENN & PENZA, LLP  
530 Greenwich Avenue  
Warwick, RI 02886  
PHONE: (401) 737-3700  
FAX: (401) 737-5499

**CERTIFICATION**

I certify that I sent a true copy of the within on

4.8.05

to:

Thomas J. Hunt, Esq.  
18 North Water Street  
New Bedford, MA 02740

